

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
LAS VEGAS DIVISION

UNITED STATES OF AMERICA,)	CASE NO: 2:08-CR-27-GMN-LRL
)	
Plaintiff,)	CRIMINAL
)	
vs.)	Las Vegas, Nevada
)	
GREGORY HOFFMAN,)	Monday, April 26, 2010
)	
Defendant.)	(3:24 p.m. to 4:24 p.m.)

SENTENCING AND DISPOSITION

BEFORE THE HONORABLE ROBERT C. JONES,
UNITED STATES DISTRICT JUDGE

Appearances: See Next Page

Court Reporter: A. Bareng, FTR

Courtroom Administrator: K. Johnson

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APPEARANCES FOR:

Plaintiff: NANCY KOPPE, ESQ.
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Defendant: TODD LEVENTHAL, ESQ.
Leventhal & Flangas
600 South Third
Las Vegas, NV 89105

U.S. Probation: Wendy Beckner

1 Las Vegas, Nevada; Monday, April 26, 2010; 3:24 p.m.

2 (Call to Order)

3 **THE COURT:** This is the time set for sentencing in
4 the case of *the United States versus Gregory Hoffman*.
5 Appearances, please.

6 **MS. KOPPE:** Good afternoon, your Honor. Nancy Koppe
7 for United States.

8 **MR. LEVENTHAL:** Good afternoon, your Honor. Todd
9 Leventhal on behalf of Mr. Hoffman, who is present in custody.

10 **THE COURT:** And any reason why we should not proceed?

11 **MR. LEVENTHAL:** No, your Honor.

12 **THE COURT:** This is the time set for sentencing,
13 Mr. Hoffman, in Case Number 2:08-0027.

14 On November 30th, 2009, you appeared before the Court
15 and entered a plea of guilty to transporting child pornography,
16 a violation of 18 U.S.C. Section 2252(a)(A)(1) and a separate
17 count: stalking, a violation of 18 U.S.C. Section
18 2261(a)(2)(A).

19 I've reviewed the presentence report and the plea
20 agreement. The Court accepts your guilty plea at this time and
21 adjudicates you guilty of these charges.

22 Counsel, let's proceed first with the presentence
23 report. You've read the report and reviewed it with
24 Mr. Hoffman?

25 **MR. LEVENTHAL:** Yes, your Honor. May we approach, or

1 do you want us here?

2 **THE COURT:** Just there for -- and when we're done,
3 I'll let you approach.

4 **MR. LEVENTHAL:** Yes, your Honor, I have reviewed the
5 presentence report with my client.

6 **THE COURT:** And do you need to enter objections or
7 comment about paragraphs of the report?

8 **(Pause / Counsel confers with client)**

9 **MS. KOPPE:** Your Honor, I'm sorry, are you waiting --
10 you're still waiting for them.

11 **(Pause / Counsel confers with client)**

12 **MR. LEVENTHAL:** The only objection we would have,
13 your Honor, is under Paragraph 14 at the bottom. In the plea
14 agreement, Mr. Hoffman never agreed to that. He wanted me to
15 make sure that the Court was aware that during the plea
16 agreement, under Paragraph 9, it was stricken that the still
17 captioned photograph of a video of prepubescent Kay performing
18 oral sex on an adult male was stricken from the proba -- from
19 the plea agreement and it showed up here on the presentence
20 report.

21 **THE COURT:** Uh-huh. That's fine, but do you object
22 to this statement in the presentence report? Do you want the
23 Government to prove that item?

24 **MR. LEVENTHAL:** Yes, that one of the known images
25 from this series which was sent by Hoffman to Kay's friend, who

1 was then a minor, is a still image taken from a video of a
2 prepubescent Kay performing oral sex on an adult male. That is
3 what was stricken from the plea agreement because my client
4 does not agree with that statement.

5 **THE COURT:** One of the known images from this series
6 -- the burden here is not beyond a reasonable doubt. The
7 burden is simple persuasion.

8 Does the Government want to proceed with the proof of
9 that report or can Probation tell me the basis for that report,
10 that last sentence?

11 **PROBATION OFFICER BECKNER:** Your Honor, all of the
12 information contained in the offense conduct section was taken
13 from investigative materials and corroborated in contact with
14 the case agent --

15 **THE COURT:** Okay.

16 **PROBATION OFFICER BECKNER:** -- in this matter.

17 **MS. KOPPE:** And, your Honor, that image has been
18 identified by the National Center for Missing and Exploited
19 Children as a known image from that series. At the time of the
20 plea agreement, the Defendant did not wish to admit that. It
21 wasn't an element of the crime so we allowed him not to admit
22 to it. However, it is -- it has, in fact, been shown by the
23 NCMEC report to be an identified image.

24 **THE COURT:** Now, the statement is precisely: "One of
25 the known images of this series which was sent by Hoffman to

1 Kay's friend, who was then a minor, is a still image taken from
2 a video of prepubescent Kay performing oral sex on an adult
3 male." So all the facts there are proven and shown, number
4 one, that this is a still image from the series; that Hoffman
5 sent it to Kay's friend, who was then a minor; and number
6 three, it contained the view that is set forth here?

7 **MS. KOPPE:** Your Honor, the Defendant admitted to
8 most of that. He admitted that he sent the child pornography.
9 He admitted what the pornography depicted. He admitted that he
10 sent it to Kay's friend, who was then a minor. The only thing
11 the Defendant refused to admit, at the time of the plea, was
12 that the person depicted in that image was in fact Kay. That
13 image has been identified by the National Center for Missing
14 and Exploited Children as a known image from the series in
15 which Kay was a victim. We do have the agent on the case in
16 the courtroom. We also have the NCMEC report.

17 **THE COURT:** Okay. And is it -- that contained in the
18 NCMEC report?

19 **MS. KOPPE:** Your Honor, the NCMEC report contains the
20 file names of all of the images that were identified. The
21 agent then looked at the file names and looked at the images,
22 so --

23 **THE COURT:** And does it contain any statement to the
24 effect that this is a still image from that series?

25 **MS. KOPPE:** Your Honor, that -- the file name is in

1 there --

2 **THE COURT:** Uh-huh.

3 **MS. KOPPE:** -- so it doesn't specifically --

4 **THE COURT:** Okay.

5 **MS. KOPPE:** -- state exactly the way that your Honor
6 put it --

7 **THE COURT:** And does it --

8 **MS. KOPPE:** -- but yes.

9 **THE COURT:** And does it conclude that Kay is depicted
10 there?

11 **MS. KOPPE:** Yes, it does.

12 **THE COURT:** Okay. And that's hearsay, of course, but
13 I'm entitled to take hearsay at this stage, am I not?

14 **MS. KOPPE:** Yes.

15 **MR. LEVENTHAL:** Yes, your Honor. And I guess your
16 Honor's questions, my client has the issue with the oral sex
17 part of that factual statement, not whether it was Kay or
18 whether it was a still image. It's the oral sex part that my
19 client is having an issue with, whether or not there was actual
20 performance of that.

21 **THE COURT:** But it depicts it, whether or not there's
22 actual performance or not, right?

23 **MS. KOPPE:** Yes, your Honor, it does.

24 **THE COURT:** Okay. I'm going to overrule your
25 objection, and I have sufficient basis and there's sufficient

1 basis for the statement in the report. Therefore, I'm going to
2 make a finding that it's properly included.

3 Any other objections?

4 **MR. LEVENTHAL:** No, your Honor.

5 **THE COURT:** And, Mr. Hoffman, you've read the report,
6 sir, and discussed it with your attorney?

7 **THE DEFENDANT:** Yes, your Honor.

8 **THE COURT:** And other than the objection your
9 attorney just stated, did you have further objections to the
10 report?

11 **THE DEFENDANT:** Yes, your Honor.

12 **THE COURT:** Uh-huh. Please, which paragraphs?

13 **THE DEFENDANT:** On page 12, item 62, your Honor.

14 **THE COURT:** Item 62. This is a conviction for
15 trespass, injury to property, misdemeanor.

16 **THE DEFENDANT:** Yes, your Honor.

17 **THE COURT:** A 24-month term of probation, two points
18 received; and this was for a conviction while represented by
19 counsel, arrested by officers on charge of disorderly conduct,
20 soliciting lewd act. It was then formally charged with
21 indecent exposure, annoying a child under 18, trespass.
22 Injured property; Counts One and Two were ultimately dismissed
23 pursuant to negotiations.

24 The conviction was for trespass, injure to property,
25 misdemeanor. That was the conviction for which you received

1 two points, and what is the objection? Counsel, maybe I should
2 ask counsel instead of --

3 **MR. LEVENTHAL:** My client's objection to this was
4 that it was over ten years, but my client was looking at the
5 age or that -- at 1997 when this occurred, and I explained to
6 him that it actually was the '99 date where you start the --

7 **THE COURT:** Probation reinstated.

8 **MR. LEVENTHAL:** -- timing on it.

9 **THE COURT:** Okay.

10 **PROBATION OFFICER BECKNER:** Your Honor, just for a
11 point of clarification, in Count One and Count Two -- or Count
12 Four, rather, that the Defendant has pleaded guilty to in this
13 case, the conduct charged again as early as June 26th of 2007,
14 so that, for the purposes of criminal history calculation,
15 would be our starting point, moving back from that date.

16 **THE COURT:** So that's within the time period allowed
17 for you to include a two point?

18 **PROBATION OFFICER BECKNER:** Yes, sir.

19 **THE COURT:** Okay. All right. I do have to overrule
20 that objection, Mr. Hoffman, on the basis that it is legitimate
21 to count that in your criminal history category score.

22 **MR. LEVENTHAL:** I believe that's the only objection
23 that my client has at this time. Thank you.

24 **THE COURT:** Okay. Let's hear the report then,
25 please.

1 **PROBATION OFFICER BECKNER:** Your Honor, the
2 Defendant, as the Court has noted, pleaded guilty to Count One,
3 transporting child pornography, which carries with it a minimum
4 of five years' imprisonment to a maximum term of 20 years'
5 imprisonment. And to Count Four, stalking, which carries a
6 maximum five-year term of imprisonment.

7 The Probation Office calculated the offense level
8 computations as follows.

9 As to Count One, transporting child pornography, the
10 base offense level was determined to be 22 pursuant to United
11 States Sentencing Guideline Chapter 2G2.2A2.

12 Two additional levels were added as the images
13 involved a prepubescent minor, one who had not attained the age
14 of 12, pursuant to United States Sentencing Guideline Section
15 2G2.2B1.

16 An additional five levels were added as the Defendant
17 distributed images of child pornography to a minor pursuant to
18 United States Sentencing Guideline Section 2G2.2B3C.

19 As some of the images involved portrayed conduct that
20 would be defined as sadistic or masochistic, a four-level
21 increase is applied pursuant to United States Sentencing
22 Guideline Section 2G2.2B4.

23 As the instant offense involved a computer or other
24 interactive device, an additional two levels is added pursuant
25 to United States Sentencing Guideline Section 2G2.2B2; and as

1 more than 600 images of child pornography were involved in the
2 instant offense, an additional five levels were added pursuant
3 to United States Sentencing Guideline Section 2G2.2B7D.

4 This resulted in an adjusted offense level of 40 as
5 to Count One. As to Count Four, the stalking count, the base
6 offensal (phonetic) of -- the base offense level, rather, was
7 determined to be 18 pursuant to United States Sentencing
8 Guideline Section 2A6.2A.

9 An additional two levels were added as the Defendant
10 committed two or more separate instances of stalking the
11 victim; and he engaged in a pattern of activity involving
12 stalking, threatening, harassing or insulting the same victim,
13 pursuant to United States Sentencing Guideline Section
14 2A6.2B1D..

15 This resulted in an adjusted offense level of 20 as
16 to Count Four. A multiple-count adjustment was completed as to
17 Counts One and Count Four pursuant to United States Sentencing
18 Guideline Chapter 3D1.4. And the adjusted offense level for
19 group one, which is Count One, was 40. This was assigned one
20 unit. The adjusted offense level for group two, which is Count
21 Four, was 20. This was assigned no units. This resulted in no
22 increase to the greater offense level of 40, resulting in a
23 combined adjusted offense level of 40.

24 Three levels were reduced from that, for an
25 affirmative acceptance of responsibility resulting in a total

1 offense level for both counts of 37.

2 The Defendant had eight countable criminal history
3 points, which placed him in a criminal history category Roman
4 Numeral IV. His guideline sentencing range for Count One was
5 240 months --

6 **THE COURT:** That's the statutory maximum.

7 **MS. KOPPE:** Yes, your Honor. That was reduced from
8 the original range, which was between 292 to 365 months.

9 As to Count Four, it is 60 months which again, as
10 your Honor pointed out, is the statutory maximum. Probation --

11 **THE COURT:** The total, even if that's consecutive, is
12 still less than the guideline as not capped.

13 **MS. KOPPE:** Your Honor, I can give you that citation.
14 I'm sorry. That -- because the sentence imposed on the count
15 carrying the highest statutory maximum, Count One, which is the
16 20 years, is less than the total punishment contemplated by the
17 guideline range, the sentence imposed on one or more of the
18 other counts shall run consecutively but only to the extent
19 necessary to produce a combined sentence equal to the total
20 punishment. And that is pursuant to the United States
21 Sentencing Guidelines Section 5G1.2D.

22 As to this Defendant, probation is not authorized
23 under the sentencing guidelines. Supervised release is
24 authorized for a term of up to lifetime as to Count One and
25 between two to three years as to Count Four.

1 The applicable guideline fine range is between 20,000
2 to \$200,000; and there is an amount of restitution owed in this
3 case. As of the writing of the presentence report, that amount
4 was calculated to be \$152,252.91. And there is a \$200
5 mandatory penalty assessment in this matter.

6 **THE COURT:** Thank you. Other than the restitution
7 amount, which we'll address in a moment, is there objection to
8 the guideline determination as suggested by Probation?

9 **MS. KOPPE:** No, your Honor.

10 **MR. LEVENTHAL:** No, your Honor.

11 **THE COURT:** That will be the finding, then, of the
12 Court, 37 with a criminal history category four, with the
13 guideline provisions being 240 months for Count One, capped at
14 240 months and capped at 60 months for Count Four.

15 Is there objection to the restitution amount
16 suggested in the report?

17 **MS. KOPPE:** Not from the United States, your Honor.

18 **THE COURT:** And no revision suggested by the United
19 States?

20 **MS. KOPPE:** That's correct.

21 **MR. LEVENTHAL:** Judge, we just -- I mean, for
22 152,000, I'm not sure where Probation comes up with 152,252.91.

23 **THE COURT:** Uh-huh. Let's ask the Government to
24 summarize that, then. The Court has received in -- has
25 received, subject to the opportunity to object, of course, a

1 victim impact statement, which includes a statement by Kay
2 herself as well as her attorney. It includes a psychological
3 status report summary detailing psychological deleterious
4 effect, not only by being the victim in the case series, but
5 also by the conduct of Mr. Hoffman. It includes statements of
6 background of psychologist, hours spent on the project and
7 attorneys' fee hours.

8 Is there objection to receipt of the victim impact
9 statement?

10 **MR. LEVENTHAL:** Not at this time, your Honor.

11 **THE COURT:** Okay. What else is the Government asking
12 me to consider, and then summarize, please, the -- also, of
13 course, an updated victim impact statement from Mr. Bogden's
14 (phonetic) office with final calculation of fees and statement
15 of the victim. What else is the Government asking me to
16 consider in summarizing please, then, as well as the
17 restitution amount?

18 **MS. KOPPE:** As regards to the restitution, your
19 Honor, my understanding is that Probation received the same
20 packet that the Court received and that my office received; and
21 that this is simply the sum of all of the items in the packet.

22 **THE COURT:** So this restitution goes to Kay and
23 counsel for Kay for payment of bills, psychologist bills, Kay's
24 legal fees and any restitution to Kay herself?

25 **MS. KOPPE:** That's correct, everything that's set out

1 in the packet.

2 **THE COURT:** And so the restitution judgment, the
3 proceeds, of course goes to Kay?

4 **MS. KOPPE:** Yes, they do, your Honor.

5 **THE COURT:** Uh-huh.

6 **MS. KOPPE:** And to bills; but, yes.

7 **THE COURT:** Okay. Does counsel want to object to
8 either the receipt? Well, you've already waived objection to
9 the receipt of the evidence, but to the determination of any of
10 the elements of restitution?

11 **MR. LEVENTHAL:** Only in so, Judge, that 152,000, I --
12 the question, I guess, I would have is that joint and several
13 will, obviously -- is this the amount of restitution that's
14 across the board for anybody who's ever found to be in
15 possession of these items?

16 **THE COURT:** It could well be. I mean, that would be
17 for another court to determine. But in other words, what I'm
18 saying is, his liability is joint and several. So even if the
19 restitution judgment were awarded against other defendants and
20 they couldn't come up with the money, he's still jointly and
21 severally liable for the total amount.

22 Obviously if somebody else paid \$30,000 first before
23 he got a chance to, he can't be held to pay the \$30,000 twice.
24 So it's simply joint and several with any other judgment,
25 criminal judgment debtors.

1 **MR. LEVENTHAL:** Well, and it's my understanding that
2 there has been some payment. Your Honor, I did receive a copy
3 of a breakdown that some -- apparently some defendants are
4 paying, and I don't know how much that is.

5 **THE COURT:** Uh-huh.

6 **MR. LEVENTHAL:** I don't know if the Court's aware but
7 some defendants are paying, and so I would ask that that amount
8 then be reduced as a restitution order to my client.

9 **THE COURT:** What I think I would intend to do is
10 enter the total amount of the restitution but you've got the
11 right to ask and to receive from the Government any accounting
12 of monies heretofore paid towards the end ultimately of a
13 satisfaction of judgment.

14 Any further objection? Okay.

15 **MR. LEVENTHAL:** No, your Honor.

16 I would also note -- just going back on the guideline
17 calculation, your Honor, the plea agreement allowed defense to
18 argue on the 600 or more images. That would be under Paragraph
19 39.

20 **THE COURT:** Right. Six hundred or more is a
21 rationale for an additional five level. Is that what is?

22 **PROBATION OFFICER BECKNER:** Yes, your Honor.

23 **THE COURT:** Uh-huh.

24 **MR. LEVENTHAL:** Yes, your Honor. And I did go over
25 to -- with the Government and we counted the images. We did

1 get up to 600 so I would withdraw my --

2 **THE COURT:** Okay.

3 **MR. LEVENTHAL:** -- argument there as in addition to
4 Paragraph 37, your Honor, under 2G2.2B4, what those portrayed.

5 **THE COURT:** Okay.

6 **MR. LEVENTHAL:** I would also withdraw my argument as
7 well there.

8 **THE COURT:** All right. If there's no further
9 objection, I'll make that my finding, then. I think I just did
10 already. There was 37, a criminal history category four; and
11 with those guidelines applicable.

12 Let's pass now, please, to the 3553 factors. What in
13 addition to the guideline, guideline determination I ought to
14 consider. I am, of course, considering all of the victim
15 statements that came in.

16 Let me ask first for Government's comment and
17 recommendation and then defense counsel, any statement that Mr.
18 Hoffman wishes to make. You don't have to, sir, but if you
19 wish to make a statement, and then final word to -- short of
20 any need for a reply to counsel, please.

21 **MS. KOPPE:** Your Honor, I would note before I begin
22 my argument, I do have the parents of the victim in this case
23 who are going to make a victim impact statement to this Court
24 as well. Before they do, however, because what they are going
25 to say is probably -- well, it's definitely much more important

1 than what I'm going to say, so I will let them finish, and
2 before --

3 **THE COURT:** Just a simple victim statement on behalf
4 of Kay.

5 **MS. KOPPE:** That's correct. Her parents are here to
6 make those statements.

7 **THE COURT:** And not under oath. It's just a victim
8 statement.

9 **MS. KOPPE:** That's correct.

10 **THE COURT:** Uh-huh.

11 **MS. KOPPE:** It's the victim impact statement.

12 **THE COURT:** Uh-huh.

13 **MS. KOPPE:** We have submitted the final order of
14 forfeiture, and we would ask your Honor to sign it. A copy of
15 that has been given to the defense.

16 **THE COURT:** That's a forfeiture for the restitution
17 judgment?

18 **MS. KOPPE:** No. That's a forfeiture --

19 **THE COURT:** Computers.

20 **MS. KOPPE:** -- for the property that was used in this
21 case --

22 **THE COURT:** Right.

23 **MS. KOPPE:** -- containing the contraband.

24 Your Honor, the evidence in this case was very clear.
25 As the Court knows, and I will go over the facts of this case

1 very quickly. But the Defendant specifically sought out a
2 known victim of a child pornography series. He found her on
3 MySpace. He told her that he had been looking for her for five
4 years. He was proud of the fact that he had found her. He
5 then began to talk to her, and as she stated -- as you can see
6 in the packet submitted to the Court, as she stated to her
7 psychologist, his looking for her for nearly five years fueled
8 her fear of having been watched.

9 As this Court knows, once child pornography is on the
10 Internet, there's no getting it back. These children who are
11 victims spend the rest of their lives not knowing who has seen
12 these images, who has seen the worst moments of their lives.
13 These are nothing less than pictures of a crime scene. These
14 are the worst moments of a child's life recorded forever and
15 sent out to people for their own gratification.

16 So this fueled her fears of exactly what she was
17 afraid would happen, that someone could find her based on these
18 images. He belittled her anger at the person who made this
19 child pornography. He called her a coward. He called her a
20 willing participant. Keep in mind that she was nine and ten
21 years old. She was a small child when this crime occurred.

22 He expressed interest in more pictures. He wanted to
23 engage in these sort of acts with her. This is someone who's
24 trying to recover from a huge, horrible trauma. And this
25 Defendant, on more than one occasion, brought it back --

1 brought it back in a way that she couldn't forget it. He even
2 sent these images to a friend of hers and said: "Hey, you
3 know, she's a porn star; hah, hah, hah."

4 Even after the Defendant has been in custody -- and
5 let me just go back for a moment. He was then found in
6 possession of over 1,000 -- we've said over 600 because that's
7 the highest enhancement we have. He was found in possession of
8 over 1,000 images of child pornography.

9 Even after he was arrested and indicted on this case
10 and he's been in custody during this time, the Defendant has
11 still been writing numerous things in his cell. He was found
12 in possession of child erotica in his cell. He was found
13 writing letters to someone he knows back in New York, talking
14 about this person's granddaughter; and I'll refer to her by her
15 initial as well because she's a minor. She was under the age
16 of ten at the time.

17 He sent letters to her. He sent poems to her. He
18 told the grandfather to "please tell C. that I love her beyond
19 measure. As a token of trust, I'm asking you to please send me
20 C.'s photograph. I have an " un -- and this is his word --
21 "unexplainable connection with her," meaning C, "that you may
22 never understand." He also talks about how he shouldn't talk
23 about whether he's sexually attracted to C. in a letter because
24 it's a touchy issue, in his words.

25 The Defendant also wrote letters to an adult woman in

1 New York named Lilly, talking about how he wanted to see her
2 again and he knew she loved him and he loved her. Lilly has
3 been contacted and, in fact, the Defendant's attentions are
4 unwelcome. She does not want to hear from him. She's not
5 interested in him but that has not deferred -- deterred the
6 Defendant.

7 He also did the same sort of thing to a guard in
8 North Las Vegas. And this was a guard who looks very young.
9 This is a Defendant who has shown that he will stop at nothing
10 to find what he wants. What he want -- what he's interested in
11 is sex with minors. He will -- he doesn't care if he
12 traumatizes someone who's already been traumatized. He doesn't
13 care if he hurts someone who's already been hurt.

14 The statutory maximum in this case, your Honor, is
15 below the guideline range and the Defendant pled and admitted
16 to consecutive -- agreed to a consecutive sentence.

17 We would ask this Court to follow the recommendation
18 of Probation, including the sentence of incarceration as well
19 as the lifetime supervised release with the conditions
20 recommended by Probation.

21 And with that, your Honor, we would ask for this
22 Court to accept the in-person victim impact statement of the
23 victim's parents.

24 **THE COURT:** Is there an objection?

25 **MR. LEVENTHAL:** No, your Honor.

1 **THE COURT:** They may come forward, please.

2 Thank you, sir. You have to come forward to the
3 microphone, please, and state your full name. And please in
4 all instances, address your comments to me, please.

5 **MR. PEALE:** My name is Chris Peale.

6 **THE CLERK:** Can you spell your last name?

7 **MR. PEALE:** P as in Paul-E-A-L-E.

8 **THE COURT:** Thank you, sir.

9 **MR. PEALE:** Hearing all that, Judge, I'm a little
10 annoyed now but -- so I'm sorry.

11 Honorable Judge Jones, officers of the Court and
12 individuals in this courtroom, my family has endured four and a
13 half years to date of a living hell because of the selfish,
14 perverted actions of a very sick and evil individual.

15 My daughter lived with this pain and trauma for six
16 years, unable to tell anyone because of the fear she had for
17 her biological father.

18 We thought we were dealing with one bad apple, but as
19 time goes by, we are finding there are more and more of these
20 sick individuals that are viewing and sickly satisfying their
21 awful desires like this individual.

22 We used to receive reminders in the mail and via
23 email, letting us know about the individuals that are being
24 prosecuted because they have our daughter's images, child
25 pornographic images, on their computer. We received enough

1 notices to overflow a 55-gallon drum. Before we had it
2 stopped, it's -- excuse me -- overflow a 55-gallon drum before
3 we had it stopped, stopped receiving them.

4 It's mind-boggling to see that there are so many of
5 these perverted individuals out there. It sickens me and hurts
6 me to the core knowing that some pervert is viewing my little
7 daughter as she was made to dress up like a hooker and is
8 molested and raped. I'm so sad that I couldn't stop these
9 awful things from happening; and with each letter, email and
10 phone call from the Department of Justice, I am reminded how I
11 could not protect her; how her innocence has been torn away;
12 and now she is continually reminded that her pictures will be
13 there forever.

14 You are one of those sick individual -- perverted
15 individuals, but you have gone further to inflict harm and
16 pain, both mentally and physically, to my daughter and to my
17 family. You sought her out on MySpace. You could talk -- you
18 contacted her friends and then her. You stalked her like a
19 pervert, disturbed and sick individual like we see in the news
20 and on TV all the time.

21 You have stepped -- no, you have jumped, over the
22 line to hurt my daughter and cause her a great deal of pain and
23 fear. You have brought more shame to her. My daughter carries
24 this shame, Judge, like a scarlet letter. She is beginning to
25 move forward but there are many moments where this tragedy

1 raises its ugly head and paralyzes her or inhibits her ability
2 to function at school and as a normal young adult.

3 The constant reminder that her pictures are out there
4 brings forward the guilt and shame which caused nightmares and
5 makes her want to isolate herself from others. Each time she
6 hears about these cases, she looks so strong on the outside;
7 but when you sit and talk with her, you see the pain. You hear
8 the struggles and you feel the sadness and the emotional drain
9 that it causes.

10 We are asking for justice, sir, with each of these
11 cases that are brought forward and with these perverts. We
12 especially wanted to be here for this case because you stalked
13 our daughter. You brought fear and shame to a person who only
14 deserves love and compassion, not sick perversion, sir. We are
15 hoping and praying that he can understand how wrong he was and
16 is and how hurtful his actions are for each victim in the
17 pictures and videos on his computers. Sir, please help him
18 understand the significance of what he has done and how each
19 child is a victim because each child has done nothing wrong.

20 My daughter's the strongest person that I know, and I
21 am so proud of her. Our daughter is still plagued by the awful
22 things that her biological father did and now by the horrible
23 fallout from these pictures and videos. She suffers deeply
24 each day so much that it has changed the wonderful life that my
25 wife have planned for her. I pray that she can heal from the

1 trauma that her biological father did to her and from the
2 constant reminders that each of these sick individuals brings
3 with each download.

4 Actions sometimes have consequences; and when actions
5 like this happen, the consequences should be powerful and
6 lasting, whether through prison and/or financial judgment.

7 Give my daughter her justice, sir, so that she may
8 completely heal some day. Thank you.

9 **THE COURT:** Thank you, sir.

10 Thank you, ma'am. If you'll come to the microphone,
11 please, and state your full name.

12 **MS. PEALE:** Gayin Via Peale (phonetic).

13 **THE COURT:** Thank you, ma'am. Go ahead.

14 **MS. PEALE:** Your Honor, ladies and gentlemen of the
15 Court, my daughter was raped and sexually abused in so many
16 horrible ways as a child by her biological father. He also
17 videotaped her abuse as he ravaged, raped and pillaged her ten-
18 year-old body. This sick man shared these repulsive pictures
19 and videos of her on the internet for perverts like himself to
20 see.

21 The sexual abuse she suffered at the hands of her
22 father without a doubt started her agonizing pain but this is
23 certainly not where her pain ends or mine. Yes, the memories
24 and trauma of her abuse still haunt her and our family but now
25 there is a new abuser.

1 The new abusers are the sick individuals who download
2 her picture and enjoy watching her being sexually assaulted as
3 a child. This sickens me. Every time these pictures of my
4 daughter are looked at and passed around, the depraved people
5 doing this are furthering my daughter's pain, shame and abuse.
6 They pass it around like some dirty magazine when, in fact,
7 it's the footage of an abused, helpless child.

8 There are days when the pain from this is unbearable
9 for me. These vile people increase her pain and mine. These
10 are certainly not the hopes and dreams I had for my little
11 girl, this life of pain and shame. It is so terribly sad and
12 painful to watch her struggle with this. These awful people
13 are raping my little girl all over again by cruelly watching
14 and enjoying her pain and deriving some sick sexual pleasure
15 out of it.

16 The knowledge of this sends me into mourning,
17 mourning the loss of my child's dignity and well-being and
18 mourning the fact that she suffers such deep pain. I have
19 watched her suffer so much already, and it kills me. I have to
20 watch her suffer still at the hands of the people wanting to
21 view the nightmare of her abuse as her innocence was being
22 robbed. She was a child and helpless and made to do disgusting
23 things that she did not want to do. Approval from her
24 biological father came only when she carried out his every
25 dirty command.

1 He posed her, insisted she say certain things and
2 made her force a smile as he was brutalizing her. When I think
3 of my daughter being groomed and posed and made to feel so
4 dirty in these perverted and depraved pictures and videos, it
5 hurts me to the core. I wonder how there can be people that
6 can actually enjoy watching my little girl being raped and
7 sexually abused. I wish they knew how much it hurts and how
8 much they are worsening our pain. Knowing that these
9 disturbing videos of her and her abuser are being viewed and
10 are continuing to foster this corrupt sexual behavior bring a
11 lot of pain, stress and shame to her at the cost of her
12 dignity, modesty and innocence. People viewing these images of
13 her are furthering the terrible addiction of child pornography
14 for themselves and the others that they pass it on to.

15 Those images are not who my daughter is or ever
16 wanted to be but because she was robbed of her innocence and
17 forced to do ugly things and it was videotaped, she is
18 continually being viewed as someone she is not. She is, in
19 fact, the opposite. These offenders are still victimizing and
20 torturing her, bringing pain and shame and every time they look
21 at those images of her. As her mother, I share in this
22 heartbreaking pain and the sadness this brings to me is
23 unending. These viewers need to understand that there is a
24 helpless little girl on the other side of these videos whose
25 innocence and childhood were shattered, and viewing these

1 things makes them a part of the abuse and unimaginable pain my
2 daughter and our family have to face all the time.

3 Making, viewing and downloading child pornography is
4 wrong and a crime. I hope everyone can know that child
5 pornography is not a victimless crime by the statement I've
6 shared with you about my daughter and our family's constant
7 pain and struggle. My daughter's life is still very hard and
8 she still struggles so much due to her sexual abuse. I also
9 struggle. It is so devastating to know your child's life has
10 been brutalized; and to make matters worse, it has been
11 released to the public for any deviant at the press of a button
12 to view and continue the sickening process of enjoying my
13 daughter's pain.

14 This still has a major grip on her life as it also
15 does on mine. She is 20 years old and has never had a
16 boyfriend due to trust issues and fear of relationships. If I
17 could quote my daughter in something she often says in
18 describing how she feels about these people downloading her
19 images, if you can imagine having a bad picture of yourself
20 taken, one that you're really embarrassed about. Now picture
21 yourself naked, being raped and abused and hurt at the age of
22 nine or ten. Those pictures of abuse at the hands of someone
23 else are now being viewed for anyone to see at the touch of a
24 button or on a computer. These viewers are even interacting
25 with your images of abuse. It feels like a slow drip of acid

1 on your soul, never ending, always robbing you of your
2 innocence, normalcy and joy.

3 Mr. Hoffman, you stalked my daughter. You viewed
4 images of my daughter. You have been so obsessed with my
5 daughter's images that you'd been searching for her. You even
6 sent these pictures of her abuse to a friend of hers. You
7 hacked your way into my daughter's MySpace to hound her, to
8 bully her, telling her you had been searching for her for
9 years. In your words on MySpace, you called my daughter a
10 coward for telling the truth. You tried to demean her in a
11 very cruel way, telling her how wrong she was. You said her
12 dad had done nothing wrong to her and asked why she was doing
13 this to him. Your sick words were very disturbing and very
14 hurtful to all of us. I wish she'd never seen those horrible
15 words. They were cruel. Because of your words and actions,
16 you have brought more pain and suffering to my daughter. You
17 are the reason my daughter has to keep reliving this horror of
18 her abuse because you keep it going. You keep viewing it, and
19 passing it on to others. She didn't have a choice. You did.
20 And your choice is traumatizing my daughter and is also keeping
21 you on a very destructive downward cycle.

22 What you did is wrong, hurtful and a crime, a crime
23 that thankfully has consequences. Child pornography and those
24 viewing it always hurt the child or the children who are
25 involved. It is destructive in every way to the viewer as

1 well. I wish I could take away my daughter's pain and give her
2 back what has been stolen from her. I could not, but I am
3 asking for accountability from the individuals who have hurt
4 her and are continuing to hurt her.

5 For my daughter and countless others who are victims
6 of such a terrible and painful crime, please grant us justice
7 today.

8 Thank you.

9 **THE COURT:** Thank you, ma'am.

10 I appreciate the victim statements. The statute
11 requires that I take them, and I assure you that I will take
12 them into consideration.

13 All right. Anything further from the Government?

14 **MS. KOPPE:** No, your Honor. We would just ask that
15 based on everything this Court has heard today, the crime
16 itself, the relevant conduct regarding the fact that the
17 Defendant is still trying to send letters to minor children and
18 importantly the impact on this victim's family, we ask this
19 Court to follow the recommendation of probation in total.

20 **THE COURT:** Thank you.

21 All right. Please, counsel, response; and then Mr.
22 Hoffman, if he wishes to make a mistake -- a statement, he does
23 not -- he is not required to make a statement. He may rely
24 upon counsel's statement or both.

25 **MR. LEVENTHAL:** Judge, my client would like to make a

1 brief statement.

2 **THE COURT:** Yes, please. Mr. Hoffman?

3 **MR. LEVENTHAL:** Speak here?

4 **THE COURT:** Yes, please. If you'd just stand there,
5 sir.

6 **THE DEFENDANT:** Your Honor, I know when to raise the
7 white flag, sir; and I'm basically, I'd just like to apologize
8 to the family.

9 **THE COURT:** Thank you, sir. All right. Counsel, on
10 the 3553 factors, please.

11 **MR. LEVENTHAL:** You know, Judge, I would just caution
12 the Court on a reasonable, what's a reasonable sentence, which
13 this Court knows that that's what must follow under 3553(a)
14 factors.

15 It's been noted many times before your Honor that my
16 client is sick and, you know, maybe there's some truth to that.
17 My client needs help. He understands that. He's here, he's
18 pleading guilty to this; and he's hoping to get into a facility
19 that could help him become part of society when he gets out in
20 20 years.

21 He does have goals when he gets out, your Honor, as
22 the Court noted presentence report; he's got some goals on what
23 he wants to do for a living. But I would caution this Court to
24 temper a sentence that's reasonable. It's easy to -- it's easy
25 to hate people like Mr. Hoffman. It's easy to hate him and

1 think that we can just throw him away. But, you know, I think
2 Mr. Hoffman said it when he said he's raising the white flag.
3 I think what he means by that is he realizes now more than ever
4 the impact that this has had on the victim and the victim's
5 family.

6 As I sat here and I looked at him and he was crying,
7 there is some emotion there, your Honor, so I would ask that
8 you take that in consideration when the Court sentences him.

9 Thank you.

10 **THE COURT:** Thank you.

11 Anything further?

12 **(No audible response)**

13 All right, let me address the 3553 factors. I really
14 think that the maximum statutory penalty here is appropriate,
15 Mr. Hoffman. I'm required by the statute to consider the
16 nature of the offense. I know that these crimes, like all
17 other crimes delineated in our Title 18, are human failings --
18 human faults; and, therefore, sentencing is a very human thing.
19 I'm supposed to take into account the particular offense, your
20 particular circumstances, your criminal history and of course
21 the protection of the public. That's what the statute requires
22 me to consider.

23 I appreciate your statement that you're raising the
24 white flag but to be honest with you, I take it in -- not in
25 any kind of guilty or sorrowful sense. I take it because I

1 really don't accept any proposition that you've realized the
2 wrongfulness and, therefore, motivation to stop engaging in
3 this particular conduct. Honestly, as I sit here, I don't
4 think you have that realization.

5 But that's neither here nor there. I am required to
6 protect the public; and because I do think that you really do
7 have a serious problem, just like other problems. I'm not
8 condemning you any more than I might condemn a defendant in
9 another type of a crime, someone who's addicted to drugs or
10 addicted to sex or addicted to eating too much. All of us
11 share to some extent or another in those various addictions so
12 I'm not pointing at you a finger that makes you different or
13 the object of hate or spite by any of us because we are all
14 guilty of those various addictive type behaviors. But I do
15 believe, and I honestly conclude and find that you are firmly
16 implanted in that addiction. That is your predilection. That
17 is your tendency, your desire; and a short sentence or anything
18 shorter than the statutory maximum, just simply would not be
19 sufficient to protect the public.

20 I have very strong doubts whether you will have any
21 ability to overcome that propensity during the 20, 25 years
22 that the statutory maximum provides or potentially even during
23 the lifetime tenure of supervised release to follow. I express
24 my sympathy for that ingrained habit but I have to recognize it
25 in setting an appropriate and reasonable sentence.

1 Number one factor in my mind is protecting the public
2 because of your own particular circumstances. I don't think I
3 can afford to have what otherwise would be a merciful stance
4 because I just don't think I'm capable of protecting the public
5 other than by setting the maximum sentence. I'm required to
6 look at your own particular circumstances and I appreciate
7 that.

8 You don't have a criminal record of drug violations
9 or shooting people or holding up banks, but you do have the
10 background and circumstance and learned behavior that you have
11 and that's what we deal with; and statutory maximum is all
12 really that would satisfy addressing the minimum sentence
13 necessary to help you with that problem.

14 The third factor is to an appropriate sentence taking
15 into account your criminal history and that's evidence here. I
16 mean, you're not -- you don't have great big long lists of
17 felony convictions, but you do have a strong history and
18 background of not only downloading and viewing child
19 pornography but also contacting children and making attempts
20 against children, including the stalking conduct alleged here.

21 So those factors I fully have in mind, and I think
22 the finding of the maximum statutory penalty is sufficient on
23 the record to express to the appellate court all of the reasons
24 why under the 3553 factors nothing less than the statutory
25 maximum does it in this case. I have great sympathy for people

1 who simply download, even download child pornography. I mean,
2 the greater sympathy, of course, is for the victims but I have
3 sympathy because it's a human addiction and I appreciate that.

4 The problem in your particular case and why minimum,
5 statutory minimums, would not suffice is because you act on it.
6 You pursue the children, and that the Court has to take into
7 serious account in order to protect the public from your
8 learned behavior.

9 So with that explanation to the appellate court, I do
10 think under the 3553 factors, it has to be nothing less, as
11 satisfactory, than the maximum statutory penalty.

12 If you would, please, stand with your attorney, sir.
13 I am prepared to sentence you, and I do hereby commit you to
14 the Bureau of Prisons for a term on Count One of 240 months.
15 Right? That's 20 years. That's the 20-year maximum. And on
16 Count Four, a term of 60 months to be served consecutively, not
17 concurrently, consecutively, with a supervised release term of
18 lifetime to follow.

19 That's lifetime. Let's see. With respect to Count
20 One, it is five to life. That's Count Four. I'm sorry. And
21 Count One is five years to life. So a lifetime supervised
22 release term concurrent, of course, on both counts. That's the
23 way we do it.

24 In addition, restitution in the amount of -- I'll
25 read the exact amount as set forth in the presentence report --

1 is \$152,252.91. That will be part of the judgment.

2 A mandatory penalty assessment of \$100 per count is
3 required by statute and due immediately. That's a total of
4 \$200.

5 Due to Defendant's financial situation, any fine is
6 being waived.

7 During the term of supervised release, sir, you are
8 subject to the conditions -- standard conditions of supervision
9 recommended by the Sentencing Commission -- and we'll give you
10 a copy of those in just a moment -- and the following mandatory
11 conditions required by statute, there are four of them.

12 First, you shall not commit another federal, state or
13 local crime during the term of supervision.

14 Second, you shall not possess illegal controlled
15 substances. Revocation of supervision is mandatory for
16 possession of illegal controlled substances. That means any
17 time during this lifetime tenure of supervised release, if you
18 possess illegal controlled substances, we can send you back to
19 jail.

20 Third, you shall submit to mandatory drug testing as
21 directed by the probation officer in this regard within 15
22 days, the first test, and no more, please, than 104 tests per
23 year. Revocation, again, is mandatory for refusal to comply.

24 Number four, you shall submit DNA collection and
25 analysis as directed by the probation officer.

1 In addition, the following special conditions are
2 imposed during that supervised release term:

3 Number one, possession of weapons. You shall not
4 possess, have under your control or have access to any firearm,
5 explosive device or other dangerous weapon as defined by
6 federal, state or local law.

7 Second, warrantless search. You shall submit to the
8 search of your person, property or automobile under your
9 control by the probation officer or any other authorized person
10 under the immediate and personal supervision of the probation
11 officer and without a search warrant to ensure compliance with
12 all conditions of release.

13 Third, mental health treatment. You shall
14 participate in and successfully complete a mental health
15 treatment program which may include testing, evaluation,
16 medication management, out-patient counseling or residential
17 placement as approved and directed by the probation officer.

18 Do I need to further delineate the testing that may
19 be implemented pursuant to that under Ninth Circuit law? I
20 specifically require that such testing may include further
21 testing of further propensity or direction towards child
22 pornography or child abuse.

23 Further, you shall be required to contribute to the
24 cost of services for such treatment as approved and directed by
25 the probation officer based on your ability to pay.

1 Fourth, debt obligations. You shall be prohibited
2 from incurring new credit charges, opening additional lines of
3 credit or negotiating or consummating any financial contracts
4 without the approval of the probation officer.

5 Fifth, access to financial information. You shall
6 provide the probation officer access to any requested financial
7 information, including personal income tax returns,
8 authorization for release of credit information and any other
9 business, financial information in which you have a control or
10 interest.

11 Sixth, victim witness prohibition. You shall not
12 have contact, directly or indirectly, with any victim or
13 witness in this instant offense unless under the supervision of
14 the probation officer, and that includes any viewing of videos
15 or pictures of victims.

16 Seven, minor prohibition. You shall not associate
17 with persons under the age of 18, except in the presence of a
18 responsible adult who is aware of the nature of your background
19 and current offense and who has been approved by the probation
20 officer.

21 Eight, sex offender treatment. You shall
22 successfully complete a treatment program for sex offenders
23 which may include polygraph, truth verification testing or
24 other physical verification testing as approved by the
25 probation officer.

1 Number nine, computer pornography prohibition. You
2 shall neither possess nor have under your control any matter
3 that is pornographic as defined in 18 U.S.C. Section 2256(2) or
4 that depicts, suggests or alludes to sexual activity of minors
5 under the age of 18. This includes but is not limited to any
6 matter obtained through access to any computer or any material
7 linked to computer access or use.

8 Ten, pornography prohibition. You shall not own,
9 possess, use, view or read any pornographic material or
10 frequent any place that is involved with pornography as defined
11 in 18 U.S.C. Section 1156(2).

12 Number 11, computer restriction and monitoring. You
13 shall provide the probation officer with accurate information
14 regarding your entire computer system, including all related
15 digital devices with memory and all passwords and Internet
16 Service Providers. You shall allow the installation of any
17 software or hardware on your computer by the probation officer,
18 and you shall abide by all rules of the computer restriction
19 and monitoring program's agreement.

20 In light of a finding that I really think this poor
21 gentleman is incapable of resisting if he has computer access,
22 I'm wondering whether I ought to add an additional condition
23 that he's prohibited from having any computer that's
24 interconnected with the Internet.

25 **PROBATION OFFICER BECKNER:** Your Honor, there's been

1 a lengthy history in this district in particular as to what
2 constitutes a computer, a digital device.

3 **THE COURT:** Right.

4 **PROBATION OFFICER BECKNER:** And there's been argument
5 that the use of an ATM machine is the use of a computer, and
6 that is why the special condition has evolved into the
7 restriction and monitoring --

8 **THE COURT:** Uh-huh I think what I'll do --

9 **MS. KOPPE:** -- rather than total prohibition.

10 **THE COURT:** -- subject to your objection is I will
11 impose an additional condition that he's prohibited from
12 possessing or using any computer device that's interconnected
13 with the Internet which is capable of displaying any image --
14 any image. That's the way I'll phrase it.

15 So you just can't use a computer device, whether it's
16 a Smartphone, cell phone. You can use a cell phone, but if
17 it's a Smartphone that is interconnected with the Internet,
18 which they often are, that is used or capable of viewing
19 images, you're prohibited from using that.

20 So you can use a cell phone, but it can't be one that
21 can take pictures or download pictures or view pictures.

22 And finally, reporting to the probation officer after
23 release. You shall report to the probation office in the
24 district to which you are released within 72 hours of discharge
25 from custody.

1 In your plea agreement, sir, you did waive rights to
2 appeal conviction and sentence. Nevertheless, I advise you
3 that some appellate rights cannot be waived. To the extent you
4 wish to entertain those, you have I advise you ten days to file
5 a notice of appeal. If you cannot afford it, an attorney would
6 be appointed to represent you in the appeal and the transcript
7 of the recording of this case prepared at Government expense.

8 Any other requests or additions?

9 **MS. KOPPE:** Your Honor, I'm not certain if you signed
10 the final order of forfeiture.

11 **THE COURT:** Without objection, I'll enter that at
12 this time.

13 **MR. LEVENTHAL:** And, your Honor, my client had asked
14 that the Court recommend that he be placed at a facility in
15 North Carolina. Apparently, there's a facility in North
16 Carolina that houses certain inmates such as my client.

17 **THE COURT:** Uh-huh.

18 **MR. LEVENTHAL:** I understand it's just a
19 recommendation, and the Court has no authority over Bureau of
20 Prison and I informed my client of that.

21 **THE COURT:** Right. They'll properly designate.
22 Any objection?

23 **MS. KOPPE:** No, your Honor; and for the record, that
24 facility's name is Butner.

25 **THE COURT:** Okay. I'll make that recommendation.

1 **MR. LEVENTHAL:** Thank you, your Honor.

2 **THE COURT:** Thank you. Thank you, Mr. Hoffman.

3 **PROBATION OFFICER BECKNER:** Your Honor, may I present
4 the Defendant with --

5 **THE COURT:** Would you, please? Uh-huh.

6 Thank you, counsel.

7 **MR. LEVENTHAL:** Thank you, your Honor.

8 **(This proceeding was adjourned at 4:24 p.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

July 26, 2010

TONI HUDSON, TRANSCRIBER